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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/531,531	03/21/00	SHIROTA Y	257718

QM02/1017

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EXAMINER
FORD,J

ART UNIT	PAPER NUMBER
3743	10

DATE MAILED: 10/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/531,531	Shinta et al
	Examiner	Art Unit
	Ford	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☑ Responsive to communication(s) filed on 6-20-01

2a)☑ This action is FINAL. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☑ Claim(s) 6-12, 14-39 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☑ Claim(s) 6-12, 14-39 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☑ The proposed drawing correction filed on 6-25-01 is: a)☑ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15)☐ Notice of References Cited (PTO-892)

16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17)☑ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7

18)☐ Interview Summary (PTO-413) Paper No(s). _____

19)☐ Notice of Informal Patent Application (PTO-152)

20)☐ Other: _____

Applicants' response of June 25, 2001 (Paper No. 8) has been considered carefully. Six of the original fourteen claims have been cancelled. Twenty five new claims have been added including four new independent claims. Is JP-U-61-73305, as submitted to the Examiner, complete? The Examiner copy has four drawing Figures. Are there more? Applicant has also submitted (Paper No. 7, March 15, 2001) a complete copy of JA 5-3365. The original copy submitted omitted the most pertinent Figure (Figure 5) and a significant amount of text. As such, the original submission of JA 5-3365 was not considered (Paper No. 3). It is considered here and an initialed copy of the PTO-1449 form (Paper No. 7) is returned with this office action. Applicant's proposed drawing changes to Figure 2 are approved.

Claims 21-23 and 28-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has tried to add to the specification (page 22, line 20+) and claims that concept of an "extension line". It is unclear where this line is and its relationship to the housing structure disclosed or its relation to "blowing passage 36" and cooling heat exchanger 21. Claim recitations employing it are vague.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6-12, 14-20, 24-31 and 34-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of JA 5-3365 (Fig. 5), JA 6-156049 and Nagao or JA 63-38016.

JA '365 (Fig. 5) shows the essential subject matter of claim 6 with the exception of the details of the fins on the evaporator ~~of the details of the fins on~~ (the evaporator is shown schematically). Arguably, elements 13 may not be "mode members" as called forth in the claims, but the translation submitted is so abbreviated these elements are not even mentioned. In applicant's response (paragraph bridging pages 13-14) translations are discussed but have not been provided.

JA '049 also shows the essential subject matter of claim 6 however it too lacks a showing of ~~guns~~ fins on the evaporator 28 but does show mode control doors 52, 56 and 62.

To have replaced elements 13 of JA '365 with the mode control doors of JA '049 to distribute air to vent, foot and defrost outlets to improve occupant comfort would have been obvious to one of ordinary skill. Alternatively, to have off-set blower 30 of JA '049 to one side of the evaporator 28 in the manner taught by Figure 5 of JA '365 to permit a reduction in height of the unit for mounting in smaller vehicle spaces would have been obvious to one of ordinary skill.

To have used an evaporator in either the so modified JA '365 or JA '049 with sepertine fins between the tubes would have been obvious in view of either Nagoo (element 2) or JA '016 (Figure 1, evaporator 5).

Regarding the condensate drain features these are apparently shown in JA '049, but again the translation is so abbreviated one cannot be sure.

Regarding claims 9 and 17, Nagoo teaches this orientation of the tubes.

Claims 21-23, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 6 above, and further in view of Gebhardt or Brandecker.

To have oriented the blower in the prior art JA 5-3365 to have a mouth which has an upper portion of a discharge opening above the bottom of the evaporator and then a tapering passage to convey the flow to the bottom surface of the evaporator would have been obvious in view of the teachings of Gebhardt or Brandecker, to further reduce height of the unit.

Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 6 above, and further in view of Gebhardt or Marsteller or Brandecker or Bates or Mullin et al.

Each of these references teaches orienting the tubes parallel to the direction of air blown from below the heat exchanger. Orientation in this manner would have been obvious in view of the repeated teachings in the prior art for purposes of improving flow and heat exchange.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-12 and 14-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,755,107 in view of the prior art applied to claims 6-12 and 14-39 of this office action. The rejections formulated above are incorporated here by reference. To the extent that there is anything claimed here which is not claimed in claims 1-7 of USP 5,755,107 it would have been obvious to have used the prior art relied upon in the previous rejections, for the reasons stated there, to arrive at the subject matter claimed here

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-12 and 14-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,044,656 in view of the prior art applied to claims 6-12 and 14-39 of this office action. The rejections formulated above are incorporated here by reference. To the extent that there is anything claimed here which is not claimed in claims 1-16 of USP 6,044,656 it would have been obvious to have used the prior art relied upon in the previous rejections, for the reasons stated there, to arrive at the subject matter claimed here.

See In re Goodman and please comment on why it does not apply here if applicant's wish to contest it. The rejection is made FINAL. It is made final because the 5-3365 reference with the most relevant Figure (Figure 5) was not provided until March 12, 2001, after the rejection was mailed. See MPEP 706.07(a). Moreover with regard the change of "disposed to be shifted" to --offset-- the Examiner did agree at the interview that these appeared to be equivalents. It is clear from pages 17-20 of applicant's response that "off-set" is much more limiting on the air flow direction from the blower, if nothing else, and counsel did not at the interview suggest that a substantive argument would be based on this new language (not found in the specification). Any

opinions elicited from the Examiner regarding the Finality of an office action were based on the Examiner's misunderstanding of the nature of this amendment.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.

John K. Ford
Primary Examiner

J. Ford

29 September 2001